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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,691	02/19/2004	Michael Travis Gilbert	003797.00766	2033

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EXAMINER

FREJD, RUSSELL WARREN

ART UNIT PAPER NUMBER

2128

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,691

Applicant(s)

GILBERT ET AL.

Examiner

Russell Frejd

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2.19.04</u> . | 6) <input type="checkbox"/> Other: _____ |

In re Application of: Gilbert et al.

Examination of Application #10/780,691

1. Claims 1-20 of application 10/780,691, filed on 19-February-2004, are presented for examination. This application is a CIP of 10/716,701, filed on 20-November-2003, now USP 7,077,749.

Objections to the Specification

2. The information in the section entitled Cross Reference to Related Applications needs to be updated.

Claim Rejections under 35 U.S.C. § 112, 2nd Paragraph

3. Claim(s) 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There are two claims numbered 15 in the case.

Claim Rejections under 35 U.S.C. § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

4.1 Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The invention claims (claim 11 preamble), "A data structure

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stored on a computer readable medium, said data structure identifying weather for simulation in a computer game”.

4.2 MPEP Section 2106(IV)(B)(2)(b)(ii) provides that a statutory computer process is determined not by how the computer performs the process, but by what the computer does to achieve a practical application with a useful, concrete and tangible result. For example, a computer process that simply calculates a mathematical algorithm that models noise is nonstatutory, while a claimed process for digitally filtering noise employing the mathematical algorithm is statutory. The long line of cases in this area that are referred to in MPEP Section 2106(IV)(B)(2)(b)(ii) exemplify this requirement, by utilizing in the claim language, terms such as controlling, executing, changing and removing. In view of the aforementioned requirement and the interim guidelines for 101 eligibility, the Examiner respectfully contends that the claim language of independent claim 11 does not claim a practical application, that language claiming: “for each of a plurality of cells in a first two-dimensional grid, a first data field storing weather information corresponding to an area of predetermined size in a simulated geographical environment of the computer game, said each first data field comprising a plurality of sub-data fields, each sub-field defining a weather layer.”

4.3 For at least these reasons, the Examiner respectfully posits that claims 11-19 of the present invention do not meet the criteria for a statutory process. Accordingly, the claims are determined to be a program per se, consisting of software modules that implement the data structure stored on a computer readable medium, said data structure identifying weather for simulation in a computer game, whereby the method does not manipulate appropriate subject matter, and thus cannot constitute a statutory process (MPEP Section 2106(IV)(B)(2)(c)).

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4.4 The Examiner also posits that the present invention is computer executable software code, or a program per se, consisting of a computer readable medium storing software instructions that implement the instructions for graphically depicting weather defined in a pre-existing weather profile to a simulated geographical environment in a computer game. For at least this reason, the software instructions in claims 1-10 and 20 of the present invention do not meet the criteria for a statutory process. The medium holding instructions is determined to recite data embodied on a computer-readable medium. However, the data does not impart functionality to either the data as claimed or to the computer. As such, the claimed invention recites non-functional descriptive material, *i.e.*, mere data. Non-functional descriptive material is merely carried on the medium, it is not structurally and functionally interrelated to the medium, and thereby does not manipulate, or execute, appropriate subject matter, and thus cannot constitute a statutory process (MPEP Section 2106(IV)(B)(2)(c)).

4.5 Furthermore, claims 1-20 are determined to not meet the criteria for a statutory process due to the inclusion of a description of a "communication media that embodies computer readable instructions, data structures, program modules or other data in a modulated data signal such as a carrier wave or other transport mechanism" [specification, p. 8, sec. 047]. In view of the interim guidelines for 101 subject matter, the instructions for graphically depicting weather of claims 1-20 do not manipulate appropriate subject matter, and thus cannot constitute a statutory process under 35 U.S.C. § 101.

Claim Rejections under 35 U.S.C. § 102

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5.1 Claims 1 and 2 are rejected under 35 U.S.C. 102(a) as being anticipated by the article authored by Grigoriev, entitled *Case Study for Natural Phenomena Visualization: Weather Effects*.

5.2 Grogoriev discloses, in claim 1: A computer readable medium storing computer executable instructions for graphically depicting weather defined in a pre-existing weather profile to a simulated geographical environment in a computer game [p. 224, Abstract], comprising: a) reading a data structure storing predefined location neutral weather information, wherein the data structure comprises weather information for each of a plurality of cells in a multi-dimensional array [p. 224, sec. Simple Approach, "the rectangular cuboid"]; b) applying the weather information read from the data structure to a grid within the simulated geographical environment of the computer game based on a user's starting position within the computer game [p. 224-5, sec. Simple Approach, "the position calculations of a single particle"]; and c) graphically depicting weather in the computer game based on a current position of the user within the grid [p. 225, sec. Procedural Approach, "the voxel coordinate system"].

Claim 2: the weather information for each cell comprises a plurality of layers of weather information [p. 225, sec. Procedural Approach, "the distance to camera"].

Claim Objections

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6. Claims 3-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Allowed Claims

7. Claims 11-20 are deemed allowable over the prior art of record at this time, pending resolution of any rejections noted above.

Response Guidelines

8. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

8.1 Any response to the Examiner in regard to this non-final action should be

directed to: Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, or the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

mailed to: Commissioner of Patents and Trademarks
P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to: (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

Date: 20-August-2006



**RUSSELL FREJD
PRIMARY EXAMINER**